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WAL-MART STORES, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Duckhorn Wine Company,

Plaintiff,

v.

Sutter Home Winery, Inc., d/b/a Trinchero
Family Estates, Duck Commander, Inc. and
Wal-Mart Stores, Inc.

Defendants.

CASE NO. C-13-05525 EDL

**ANSWER AND COUNTERCLAIM FOR
DECLARATORY RELIEF**

DEMAND FOR JURY TRIAL

ANSWER

Defendant, Wal-Mart Stores, Inc., (“Walmart”), for its Answer to the Complaint filed by Plaintiff Duckhorn Wine Company (“Plaintiff”), alleges as follows:

1. Walmart is without sufficient information and knowledge as to Duckhorn’s motivation in initiating the action and on such basis denies that Duckhorn is seeking to protect its trademarks in bringing the lawsuit. Walmart further denies all of the remaining allegations in Paragraph 1 of the Complaint.
2. Walmart is without sufficient information and knowledge as to the allegations contained in Paragraph 2 of the Complaint and on such basis denies such allegations.

3. Walmart is without sufficient information and knowledge as to the allegations contained in Paragraph 3 of the Complaint and on such basis denies such allegations.
4. Walmart admits that it is selling wine labeled with the mark DUCK COMMANDER and images of ducks. Walmart denies all of the remaining allegations in Paragraph 4 of the Complaint.
5. Walmart is without sufficient information and knowledge as to the allegations contained in Paragraph 5 of the Complaint and on such basis denies such allegations.
6. Walmart is without sufficient information and knowledge as to the allegations contained in Paragraph 6 of the Complaint and on such basis denies such allegations.
7. Walmart is without sufficient information and knowledge as to the allegations contained in Paragraph 7 of the Complaint and on such basis denies such allegations.
8. Walmart is without sufficient information and knowledge as to the allegations contained in Paragraph 8 of the Complaint and on such basis denies such allegations.
9. Walmart is without sufficient information and knowledge as to the allegations contained in Paragraph 9 of the Complaint and on such basis denies such allegations.
10. Walmart is without sufficient information and knowledge as to the allegations contained in Paragraph 10 of the Complaint and on such basis denies such allegations.
11. Walmart is without sufficient information and knowledge as to the allegations contained in Paragraph 11 of the Complaint and on such basis denies such allegations.
12. Walmart is without sufficient information and knowledge as to the allegations contained in Paragraph 12 of the Complaint and on such basis denies such allegations.
13. Walmart is without sufficient information and knowledge as to the allegations contained in Paragraph 13 of the Complaint and on such basis denies such allegations.

1 14. Walmart admits the first sentence of Paragraph 14 of the Complaint. Walmart admits
2 that it is a large, worldwide public corporation operating retail stores in different parts
3 of the world under various different names and that it sells various products bearing the
4 DUCK COMMANDER mark, including wine. Walmart is without sufficient
5 information and knowledge as to the remaining allegations contained in Paragraph 14
6 of the Complaint and on such basis denies such allegations.

7
8 15. Denied.

9 16. Admitted.

10 17. Walmart admits that wine labeled with the DUCK COMMANDER mark and a duck
11 design are sold by Walmart in the State of California and within this judicial district.
12 Walmart is without sufficient information and knowledge as to the remaining
13 allegations contained in Paragraph 17 of the Complaint and on such basis denies such
14 allegations.

15
16 18. Walmart admits that it has transacted business in the State of California and within this
17 judicial district.

18
19 19. Walmart is without sufficient information and knowledge as to the allegations
20 contained in Paragraph 19 of the Complaint and on such basis denies such allegations.

21 20. Walmart is without sufficient information and knowledge as to the allegations
22 contained in Paragraph 20 of the Complaint and on such basis denies such allegations.

23
24 21. Walmart is without sufficient information and knowledge as to the allegations
25 contained in Paragraph 21 of the Complaint and on such basis denies such allegations.

26 22. Walmart is without sufficient information and knowledge as to the allegations
27 contained in Paragraph 22 of the Complaint and on such basis denies such allegations.
28

1 23. Walmart is without sufficient information and knowledge as to the allegations
2 contained in Paragraph 23 of the Complaint and on such basis denies such allegations.

3 24. Walmart is without sufficient information and knowledge as to the allegations
4 contained in Paragraph 24 of the Complaint and on such basis denies such allegations.

5 25. Walmart is without sufficient information and knowledge as to the allegations
6 contained in Paragraph 25 of the Complaint and on such basis denies such allegations.

7 26. Walmart is without sufficient information and knowledge as to the allegations
8 contained in Paragraph 26 of the Complaint and on such basis denies such allegations.

9 27. Walmart is without sufficient information and knowledge as to the allegations
10 contained in Paragraph 27 of the Complaint and on such basis denies such allegations.

11 28. Walmart is without sufficient information and knowledge as to the allegations
12 contained in Paragraph 28 of the Complaint and on such basis denies such allegations.

13 29. Walmart is without sufficient information and knowledge as to the allegations
14 contained in Paragraph 29 of the Complaint and on such basis denies such allegations.

15 30. Walmart is without sufficient information and knowledge as to the allegations
16 contained in Paragraph 30 of the Complaint and on such basis denies such allegations.

17 31. Walmart is without sufficient information and knowledge as to the allegations
18 contained in Paragraph 31 of the Complaint and on such basis denies such allegations.

19 32. Walmart is without sufficient information and knowledge as to the allegations
20 contained in Paragraph 32 of the Complaint and on such basis denies such allegations.

21 33. Walmart is without sufficient information and knowledge as to the allegations
22 contained in Paragraph 33 of the Complaint and on such basis denies such allegations.

1 34. Walmart is without sufficient information and knowledge as to the allegations
2 contained in Paragraph 34 of the Complaint and on such basis denies such allegations.

3 35. Walmart is without sufficient information and knowledge as to the allegations
4 contained in Paragraph 35 of the Complaint and on such basis denies such allegations.
5

6 36. Denied.

7 37. Walmart is without sufficient information and knowledge as to the allegations
8 contained in Paragraph 37 of the Complaint and on such basis denies such allegations.
9

10 38. Walmart is without sufficient information and knowledge as to the allegations
11 contained in Paragraph 38 of the Complaint and on such basis denies such allegations.
12

13 39. Walmart admits that it sells wine, beer and spirits in some of its stores.

14 40. Walmart is without sufficient information and knowledge as to the allegations
15 contained in Paragraph 40 of the Complaint and on such basis denies such allegations.
16

17 41. Walmart is without sufficient information and knowledge as to the allegations
18 contained in Paragraph 41 of the Complaint and on such basis denies such allegations.

19 42. Walmart admits that it has thousands of retail outlets across the country, and denies the
20 remaining allegations contained in Paragraph 42 of the Complaint.

21 43. Walmart denies the allegations contained in the first sentence of Paragraph 38 of the
22 Complaint and is without sufficient information and knowledge as to the remaining
23 allegations contained in Paragraph 43 of the Complaint and on such basis denies such
24 allegations.
25

26 44. Walmart is without sufficient information and knowledge as to the allegations
27 contained in Paragraph 44 of the Complaint and on such basis denies such allegations.
28

1 45. Walmart is without sufficient information and knowledge as to the allegations
2 contained in Paragraph 45 of the Complaint and on such basis denies such allegations.

3 46. Walmart is without sufficient information and knowledge as to the allegations
4 contained in Paragraph 46 of the Complaint and on such basis denies such allegations.

5
6 47. Walmart admits that DUCK COMMANDER wines have sold and continue to be sold
7 in Walmart locations. Walmart is without sufficient information and knowledge as to
8 the remaining allegations contained in Paragraph 47 of the Complaint and on such basis
9 denies such allegations.

10 48. Walmart is without sufficient information and knowledge as to the allegations
11 contained in Paragraph 48 of the Complaint and on such basis denies such allegations.

12
13 49. Walmart is without sufficient information and knowledge as to the allegations
14 contained in Paragraph 49 of the Complaint and on such basis denies such allegations.

15 50. Walmart is without sufficient information and knowledge as to the allegations
16 contained in Paragraph 50 of the Complaint and on such basis denies such allegations.

17
18 51. Walmart admits that it continues to sell DUCK COMMANDER wine. Walmart denies
19 the remaining allegations contained in Paragraph 51 of the Complaint.

20
21 **FIRST CAUSE OF ACTION**

22 **(Trademark Infringement, 15 U.S.C. § 1114)**

23 52. Walmart hereby incorporates and re-alleges its answers to Paragraphs 1 through 51 of
24 the Complaint as though fully set forth herein.

25
26 53. Walmart is without sufficient information and knowledge as to the allegations
27 contained in Paragraph 53 of the Complaint and on such basis denies such allegations.
28

1 54. Walmart is without sufficient information and knowledge as to the allegations
2 contained in Paragraph 54 of the Complaint and on such basis denies such allegations.

3
4 55. Admitted.

5 56. Denied as to Walmart. Walmart is without sufficient information and knowledge as to
6 the remaining allegations contained in Paragraph 56 of the Complaint and on such basis
7 denies such allegations.

8
9 57. Denied.

10 58. Denied.

11
12 59. Denied.

13 60. Walmart is without sufficient information and knowledge as to the allegations
14 contained in Paragraph 60 of the Complaint and on such basis denies such allegations.

15
16 61. Denied.

17 **SECOND CAUSE OF ACTION**

18 **(Trademark Dilution, 15 U.S.C. § 1125)**

19
20 62. Walmart hereby incorporates and re-alleges its answers to Paragraphs 1 through 61 of
21 the Complaint as though fully set forth herein.

22
23 63. Denied.

24 64. Denied.

25 65. Walmart is without sufficient information and knowledge as to the allegations
26 contained in Paragraph 65 of the Complaint and on such basis denies such allegations.

27
28 66. Denied.

1 67. Denied.

2 68. Denied.

3
4 **THIRD CAUSE OF ACTION**

5 **(Trademark Infringement, Bus. & Prof. Code §14245)**

6
7 69. Walmart hereby incorporates and re-alleges its answers to Paragraphs 1 through 68 of
8 the Complaint as though fully set forth herein.

9
10 70. Walmart is without sufficient information and knowledge as to the allegations
11 contained in Paragraph 70 of the Complaint and on such basis denies such allegations.

12 71. Walmart is without sufficient information and knowledge as to the allegations
13 contained in Paragraph 71 of the Complaint and on such basis denies such allegations.

14
15 72. Admitted.

16 73. Walmart is without sufficient information and knowledge as to the allegation as to
17 Duckhorn's rights in a California trademark registration for DUCKHORN and on such
18 basis deny such allegation. Walmart admits that if such registration was valid and in
19 force, it would have had constructive knowledge of such California trademark
20 registration when it began selling DUCK COMMANDER wine. Walmart denies the
21 remaining allegations in Paragraph 73 of the Complaint.

22 74. Denied.

23
24 75. Denied.

25
26 76. Denied.

27 77. Walmart is without sufficient information and knowledge as to the allegations
28 contained in Paragraph 77 of the Complaint and on such basis denies such allegations.

78. Denied.

FOURTH CAUSE OF ACTION

(Trademark Dilution, Bus. & Prof. Code § 14247)

79. Walmart hereby incorporates and re-alleges its answers to Paragraphs 1 through 78 of the Complaint as though fully set forth herein.

80. Denied.

81. Denied.

82. Walmart is without sufficient information and knowledge as to the allegations contained in Paragraph 82 of the Complaint and on such basis denies such allegations.

83. Denied.

84. Denied.

85. Denied.

FIFTH CAUSE OF ACTION

(Common Law Trademark Infringement)

86. Walmart hereby incorporates and re-alleges its answers to Paragraphs 1 through 85 of the Complaint as though fully set forth herein.

87. Walmart is without sufficient information and knowledge as to the allegations contained in Paragraph 87 of the Complaint and on such basis denies such allegations.

88. Denied.

89. Denied.

1 90. Denied.

2
3 91. Walmart is without sufficient information and knowledge as to the allegations
4 contained in Paragraph 91 of the Complaint and on such basis denies such allegations.

5 92. Denied.

6
7 **SIXTH CAUSE OF ACTION**

8 **(Unfair Competition Law, Bus. & Prof. Code §17200)**

9
10 93. Walmart hereby incorporates and re-alleges its answers to Paragraphs 1 through 92 of
11 the Complaint as though fully set forth herein.

12 94. Denied.

13 95. Denied.

14
15 96. Denied.

16 97. Denied.

17
18 98. Denied.

19
20 **PRAYER FOR RELIEF**

21 Wherefore, Walmart requests that all of Plaintiff's claims and the relief requested be
22 denied in their entirety and that judgment be entered in favor of Walmart.

23 This constitutes an exceptional case such that Walmart should be awarded its attorneys'
24 fees pursuant to 15 U.S.C. § 1117(a). Walmart further requests that it be awarded its costs and
25 expenses.

26 ///

27 ///

Dated: 12/20/13

Respectfully submitted,

DICKENSON, PEATMAN & FOGARTY

By


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Attorneys for Defendant,

WAL-MART STORES, INC.

DEMAND FOR JURY TRIAL

Defendant hereby requests a trial by jury in this matter.

Dated: December 20, 2013

Respectfully submitted,

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